

# In the United States Court of Federal Claims

## OFFICE OF SPECIAL MASTERS

No. 16-232V

Filed: September 9, 2016

UNPUBLISHED

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MELISSA WAGNER,

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Petitioner,

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v.

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SECRETARY OF HEALTH  
AND HUMAN SERVICES,

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Respondent.

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*Mark L. Krueger, Krueger & Hernandez, S.C., Baraboo, WI, for petitioner.*

*Justine Elizabeth Walters, U.S. Department of Justice, Washington, DC, for respondent.*

### **DECISION AWARDING DAMAGES**<sup>1</sup>

**Dorsey**, Chief Special Master:

On February 17, 2016, petitioner filed a petition for compensation under the National Vaccine Injury Compensation Program, 42 U.S.C. §300aa-10, *et seq.*,<sup>2</sup> (the “Vaccine Act”). Petitioner alleges that she suffered left shoulder synovitis and adhesive capsulitis that was caused-in-fact by her October 16, 2014 influenza (“flu”) vaccination. Petition at 1. The case was assigned to the Special Processing Unit of the Office of Special Masters.

On August 8, 2016, a ruling on entitlement was issued, finding petitioner entitled to compensation for a shoulder injury related to vaccine administration (“SIRVA”). On September 8, 2016, respondent filed a proffer on award of compensation (“Proffer”) indicating petitioner should be awarded \$122,500.00. Proffer at 1. In the Proffer, respondent represented that petitioner agrees with the proffered award. Based on the

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<sup>1</sup> Because this unpublished decision contains a reasoned explanation for the action in this case, the undersigned intends to post it on the United States Court of Federal Claims' website, in accordance with the E-Government Act of 2002. 44 U.S.C. § 3501 note (2012) (Federal Management and Promotion of Electronic Government Services). In accordance with Vaccine Rule 18(b), petitioner has 14 days to identify and move to redact medical or other information, the disclosure of which would constitute an unwarranted invasion of privacy. If, upon review, the undersigned agrees that the identified material fits within this definition, the undersigned will redact such material from public access.

<sup>2</sup> National Childhood Vaccine Injury Act of 1986, Pub. L. No. 99-660, 100 Stat. 3755. Hereinafter, for ease of citation, all “§” references to the Vaccine Act will be to the pertinent subparagraph of 42 U.S.C. § 300aa (2012).

record as a whole, the undersigned finds that petitioner is entitled to an award as stated in the Proffer.

Pursuant to the terms stated in the attached Proffer, **the undersigned awards petitioner a lump sum payment of \$122,500.00 in the form of a check payable to petitioner, Melissa Wagner.** This amount represents compensation for all damages that would be available under § 300aa-15(a).

The clerk of the court is directed to enter judgment in accordance with this decision.<sup>3</sup>

**IT IS SO ORDERED.**

**s/Nora Beth Dorsey**  
Nora Beth Dorsey  
Chief Special Master

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<sup>3</sup> Pursuant to Vaccine Rule 11(a), entry of judgment can be expedited by the parties' joint filing of notice renouncing the right to seek review.

**IN THE UNITED STATES COURT OF FEDERAL CLAIMS  
OFFICE OF SPECIAL MASTERS**

MELISSA WAGNER,	)	
	)	
	)	
Petitioner,	)	
	)	
v.	)	No. 16-232V
	)	Chief Special Master Dorsey
	)	ECF
SECRETARY OF HEALTH AND	)	SPU
HUMAN SERVICES,	)	
	)	
Respondent.	)	
	)	

**RESPONDENT’S PROFFER ON AWARD OF COMPENSATION**

On February 17, 2016, petitioner, Melissa Wagner, filed a petition for compensation under the National Childhood Vaccine Injury Act, 42 U.S.C. §§ 300aa-1 to -34 (“Vaccine Act”), alleging that she developed a left shoulder injury as a result of receiving an influenza vaccination on October 16, 2014. On August 5, 2016, respondent filed her Rule 4(c) Report stating that petitioner’s left shoulder injury is consistent with a shoulder injury related to vaccine administration (“SIRVA”) and conceding that her SIRVA is compensable under the Vaccine Act. Accordingly, on August 8, 2016, Chief Special Master Dorsey issued a Ruling on Entitlement finding that petitioner is entitled to compensation for her SIRVA.

**I. Items of Compensation**

Based upon the evidence of record, respondent proffers that petitioner should be awarded \$122,500.00, which represents all elements of compensation to which petitioner is entitled under 42 U.S.C. § 300aa-15(a).<sup>1</sup> Petitioner agrees.

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<sup>1</sup> Should petitioner die prior to entry of judgment, the parties reserve the right to move the Court for appropriate relief. In particular, respondent would oppose any award for future medical expenses, future lost earnings, and future pain and suffering.

**II. Form of the Award**

The parties recommend that the compensation provided to petitioner should be made through a lump sum payment of \$122,500.00 in the form of a check payable to petitioner.

Petitioner agrees.

Respectfully submitted,

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Acting Director  
Torts Branch, Civil Division

CATHARINE E. REEVES  
Acting Deputy Director  
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s/ Justine Walters  
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DATE: September 8, 2016